85-236

NO.

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

1985 Term

HARRY W. EICHENLAUB,

Petitioner

v.

DAVID ALAN YURKY,

Respondent

PETITION FOR A WRIT OF CERTIORARI AND APPENDIX TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

Does due process require a hearing before an independent tribunal for a pretrial detainee transferred from a County prison to a State correctional institution on the basis of an emergency transfer as a security risk?

PARTIES TO THE PROCEEDING

The Respondent and Petitioner are named in the caption of this case. In addition, the Defendants, Mr. Zimmerman, Warden SCI at Huntingdon, Pennsylvania and Mr. Wicker, Deputy Superintendent SCI at Huntingdon, Pennsylvania are employees of the Commonwealth of Pennsylvania, Bureau of Corrections.

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PETITION FOR A WRIT OF CERTIORARI AND APPENDIX TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Harry Eichenlaub, an individual, respectfully petitions for a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The Opinion of the Court of Appeals (Appendix A infra) is not reported. The Opinion of the District Court (Appendix B infra) is also unreported.

JURISDICTION

(1) CONSTITUTIONAL PROVISION INVOLVED

Amendment 14 §1. Citizens of the United States. All persons born or naturalizing.... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within his jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. STATEMENT OF JURISDICTION IN THE COURT OF FIRST INSTANCE

Jurisdiction in the Federal District Court for the Middle District of Pennsylvania arises under 28 United States Code, §1343.

B. THE FACTS

The uncontroverted material facts in this case are that from December 23, 1981, until January 8, 1982, Plaintiff was a pretrial detainee at the Clinton County Jail (CCJ). On January 8, 1982, Plaintiff was transferred to the State Correctional Institution at Huntingdon (SCIH) without being given a hearing wherein he might voice his opposition to said transfer. On his arrival at SCIH, Plaintiff was assigned to Administrative Custody (AC) until such time as he could be taken in front of the Program Review Committee (PRC). This was accomplished on January 11, 1982. The PRC's determination at that time was that, pending a chance to gather more information about the Plaintiff, he should remain in AC. Plaintiff did, in

fact, remain in that mode of custody until February 9, 1982. During the time he was in AC, Plaintiff Yurky had all the access to his attorneys permitted by Bureau of Corrections (BOC) regulations. Over three months elapsed from the time Plaintiff was released from General Population (GP) to the time (May 19, 1982) that his trial began. During all relevant times Defendant Eichenlaub was the Warden of CCJ, Defendant Wicker was Deputy Superintendent at SCIH and Defendant Zimmerman was Warden of SCIH.

In addition, the Affidavit of Harry W. Eichenlaub filed with his Brief in the Court below as Exhibit "1" avers that following additional facts:

1. Eichenlaub was informed by Deputy Commissioner Deremus on January 8, 1982, that inasmuch as this was an

emergency transfer, "we'll (prison officials) have a hearing later."

2. Clinton County Jail was and is a minimum security institution, as is Centre County Jail.

3. On May 19, 1982, Plaintiff began trial on the robbery, conspiracy, and criminal complicity actions. On May 19, 1982, he was convicted of these crimes and is presently serving a sentence at SCI-H.

4. All of the allegations of Plaintiff's Complaint alleging deprivation of constitutional rights and right to any kind of liability are denied by Defendant Eichenlaub's Answer.

5. Eichenlaub received permission to transfer Plaintiff to SCI-H while Plaintiff was at a Preliminary Hearing at State College, Pennsylvania.

6. Eichenlaub harbors no ill will toward the Plaintiff, and at all times, he has acted the good faith belief that his actions were lawful.

Appellant Yurky was aware of his bail being raised to $300,000.00 and was aware of the condition existing at Clinton County Jail.

SUMMARY OF ARGUMENT

No hearing before an independent tribunal must be accorded a pretrial detainee transferred as a security risk from a County prison to a State correctional institution in an emergency situation where the detainee had general notice of the reason for the transfer and had effective assistance of counsel.

ARGUMENT

I. NO HEARING BEFORE AN INDEPENDENT TRIBUNAL MUST BE ACCORDED A

PRETRIAL DETAINEE TRANSFERRED AS A SECURITY RISK FROM A COUNTY PRISON TO A STATE CORRECTIONAL INSTITUTION IN AN EMERGENCY SITUATION WHERE THE DETAINEE HAD GENERAL NOTICE OF THE REASON FOR THE TRANSFER AND HAD EFFECTIVE ASSISTANCE OF COUNSEL.

This Court has delineated the type of process due a pretrial detainee in Bell v. Woolfish, 441 U.S. 520, 60 L. Ed. 99 Supreme Ct. 1861, 60 L. Ed. 2d 447 (1979). In addition, this Court has delineated the kind of process due persons in prison in Hewitt v. Helms, _____ U.S._____, 103 S. Ct. 864, _____L. Ed. 2d_____ (1983). The District Court held that the due process given Respondent in this case was adequate (App. 9b). The Court stated:

> "Plaintiff Yurky was already validly incarcerated. A prima facie case had been found to exist against him and a

> factors approach had dictated that high bail, which Yurky failed to raise, be set."

The prison panel gave Yurky general notice of the reason for the transfer, that is, he was a security risk. Harry Eichenlaub did obtain the Court of Common Pleas approval for the transfer and the record demonstrates that there was a rational basis for the transfer.

The Circuit Court of Appeals held that the case of Cobb v. Aytch, 643 F.2d 946 (C.A. 3 1981) controlled the case at bar and that a hearing before an independent tribunal was required (App. pgs. 8a-12a).

A transfer of a prisoner from one prison to another does not infringe a protected liberty interest, Montanye v. Haynes, 427 U.S. 236, 96 S. Ct. 2543, 49

L. Ed. 2d 466 (1976). This has also been reitterated in the case of Olium v. Wakinekona, 103 S. Ct. 1741 (1983). The Court of Appeals held that Petitioner was not denied the effective assistance of counsel, and has only held with respect to Petitioner that the only thing suffered by Respondent was the lack of a hearing before an independent tribunal. As was stated by this Court in Olium, supra, at 103 Supreme Ct. at 1748, "process is not an end in itself. Its constitutional purpose is to protect a substance of interest to which the individual has a legitimate claim of entitlement." Here, there is no such interest to protect. See also Jones v. Mabry, 723 F.2d 590 (C.A. 8 1983).

II. PLAINTIFF SUFFERED NO LOSS OF PROCEDURAL DUE PROCESS, SINCE HE WAS

AFFORDED THAT DUE PROCESS TO WHICH HE WAS ENTITLED.

A. THE CASE OF COBB V. AYTCH, 643 F.2d 946 (C.A. 3, 1981) IS DISTINGUISHABLE ON ITS FACTS.

In Cobb, the Third Circuit considered, inter alia, whether the transfer of pretrial detainees being held in Philadelphia-area correctional facilities to State institutions implicated a protectible liberty interest which would entitle the detainees to due process in connection with such transfer. That Court concluded, based on the facts of that case, Id. at 960, that a federal liberty interest was involved in such transfers, and the detainees so affected were entitled to a pre-transfer hearing.

The undisputed facts of record established the following: detainees

were transferred sizeable distances (at minimum 90 miles, at maximum 300 miles). Id. at 949. As a result, many transferred detainees were deprived of the assistance of their court-appointed counsel and in some cases missed court appearances and hearings when they were not returned to Philadelphia on time. Id. at 951. Due to ensuing continuances, the pre-trial period of some inmates was prolonged, as was the eventual length of their sentences. Id. Additionally, visits to detainees by family and friends were reduced, presumably due to the increased distance. Id. at 952. In some cases, restrictions were imposed on detainees' mail privileges in State institutes. Id.

As previously mentioned, the Court in Cobb determined that the speci-

fic facts of record implicated the detainees' Sixth Amendment rights to speedy trial and effective assistance of counsel and concluded that a protectible liberty interest was present under such circumstances. A similar conclusion on the facts of this case is not justified.

Yurky's transfer from CCJ to SCIH involved a difference in distance of only approximately 60 miles.[1] At SCIH,

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[1]The change in Yurky's confinement did not result in sizeable increases in the distance between him and his attorneys. Yurky's attorneys were located in Lock Haven and Bellefonte. See Yurky's Responses to the Commonwealth Defendants' Interrogatories, filed November 18, 1982, at p. 18, no. 17. The Court may take judicial notice of the distances between the following places: between Huntingdon and Lock Haven, approximately 60 miles; between Bellefonte and Huntingdon, 40 miles; and between Lock Haven and Bellefonte, approximately 25 miles. Accordingly, one of Yurky's attorneys (the one in Lock Haven) would have been required to travel only about one hour to

Yurky had adequate means for effectively communicating with his counsel and any other parties with whom he may have chosen to correspond. Likewise, there is nothing of record which indicates that Yurky ever failed to appear in a Court proceeding or that the duration of his pre-trial confinement was increased as a result.

Thus, the bases on which the Cobb Court found its decision were simply not present here, and Yurky cannot successfully assert a protected constitutional interest giving rise to procedural or substantive due process.

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visit him; the other much less. The attorney in Bellefonte would have to travel 25 miles to visit Yurky at Lock Haven and 40 miles to see him at SCIH, a difference of only about 20 miles. These differences are not comparable to those in Cobb.

B. YURKY WAS PROVIDED WITH PROCEDURAL DUE PROCESS IN THE SENSE REQUIRED BY HEWITT V. HELMS, 459 U.S. 460, 103 S. CT. 864, 74 L. Ed. 2D 675 (1983).

It is submitted that the Cobb v. Aytch procedural requirements set forth in that case, 643 F.2d 946, 957-960, have been modified by the holding in Hewitt v. Helms, supra, as to what procedural due process is due in a prison transfer situation. What Plaintiff was entitled to in order to satisfy the due process clause under the case of Hewitt v. Helsm, supra, is : (1) Some notice of the charges against him; and (2) an opportunity to present his views to the prison officials charged with deciding whether to transfer him to administrative segregation. In the case

at bar, Plaintiff did get some notice of the charges against him (that he was a security risk) by the BC-141D Form given him at the time that he arrived SCIH. Further, Plaintiff had an opportunity on January 11 to present his opposition to the security risk matter to the Program Review Committee, the Committee established by regulation to decide what disposition should be made of an inmate upon his transfer to the institution.

In addition, an inmate must be given an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation in this case. See Hewitt v. Helms, 103 S. Ct. 864, 874. While Deputy Commissioner Deremus made the decision to allow the transfer of Plaintiff to SCIH, it is submitted that

the PRC Committee is the best instrument for allowing the Plaintiff to present his views to prison officials. Under the administrative regulations, the PRC has primary decision making power on where to place the inmate once he has arrived at the prison (see 37 Pa. Code Section 95.107) and is in a position to make recommendations to the Superintendent of Prisons regarding transfer of inmates. See 37 Pa. Code Section 95.103.

We are concerned in this case with an emergency transfer for security reasons, where it is not necessary to have a hearing prior to transfer. See the regulations themselves and the case of Cobb v. Aytch, 643 F.2d 946 and 960 (C.A. 3, 1981) which recognizes this kind of situation. Although the Affidavit of present acting Commissioner of

Corrections, Jeffes, states that it is the responsibility of transferring County officials to insure any hearing that may have been required in connection with the transfer of the inmate from a County facility to a State facility was held, this is not the Affidavit of the preparer of the memorandum, nor does it meet the emergency situation.

It is submitted that the memorandum governing emergency transfers itself, provides for a hearing before the PRC Committee Subsection III(F) of this memorandum is set forth here in its entirety:

> "Emergency transfers may be approved orally by the Deputy Commissioner with all of the above procedures accomplished after-the-fact. In such cases of dire emergency, the prisoner shall be notified in writing of the transfer including the reason prior to the transfer. The required hearing procedures before the Program Review committee, including 24 hour

> written notice in advance of the hearing shall be accomplished by the receiving institution in a timely manner. The inmate may waive the 24 hour advance notice in writing."

When this section is read with connection with the 24-hour Notice of Hearing provision of III(C)(1), it indicates that the question of who should hold the hearing in the case of an emergency transfer is arguably ambiguous and if clear either way seems to indicate that the hearings shall be held by the PRC Committee.

There is another problem with any argument that the County warden in the emergency transfer situation should be responsible for seeing that the hearing is held. The Helms v. Hewitt case, supra, indicates that the hearing should be held before those responsible for the decision to transfer. Warden

Eichenlaub did not make the decision to transfer--he was powerless to do so. The decision was made by Deputy Commissioner Deremus as provided in III of the Transfer Memorandum. Thus, it is submitted that the hearing should be held by prison officials at the transferee institution within the holdings of Helms v. Hewitt, supra.

While the case of Cobb v. Aytch, supra, did address in a very brief fashion the problem of emergency transfers (see 643 F. 2d 946 at 961 in the context of wording of the injunction), it is to be noted that the proper tribunal question was left open by the Court.

Thus, it is submitted that Plaintiff, in fact, did receive due process concerning his transfer from CCJ to SCIH.

Respectfully submitted,

CANDOR, YOUNGMAN, GIBSON & GAULT

By _____

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 84-5636

YURKY, DAVID ALAN

v.

EICHENLAUB, HARRY, BROWN, CARSON, GILLMORE, DAVID, MR. ZIMMERMAN, Warden, SCIH, MR. WICKER, Deputy Supt. SCIH, PROGRAM REVIEW COMMITTEE OF 1/11 SCIH, TWO UNNAMED CLINTON COUNTY JAIL GUARDS, Lock Haven, Pa.

David Alan Yurky, Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(D.C. Civil No. 82-0663)

(District Judge:
Honorable Richard P. Conaboy)

Submitted under Third Circuit Rule 12(6)
March 25, 1985

Before: GIBBONS, SLOVITER and VAN DUSEN, Circuit Judges

(Opinion filed May 10, 1985)

MEMEORANDUM OPINION OF THE COURT

VAN DUSEN, Senior Circuit Judge.

Plaintiff, David Alan Yurky, brought an action under 42 U.S.C. §1983 (1982) seeking monetary and injunctive relief against Defendants, who are officials of the Clinton County (Pennsylvania) Jail (CCJ) and the State Correctional Institution at Huntingdon (SCIH). Plaintiff appeals from a District Court Order granting Defendants' Motion for Summary Judgment. We will vacate the District Court Order in part and remand for further proceedings in accordance with this Opinion.

Plaintiff contends that his pretrial transfer from CCJ to SCIH violated the due process requirements outlined by this Court in Cobb v. Aytch, 643 F.2d 946

(3d Cir. 1981), because he was given neither notice of the transfer nor an opportunity to be heard before a Pennsylvania tribunal independent of the prison system. Plaintiff further contends that his placement in administrative custody -- rather than in the general prison population -- at SCIH violated due process because (a) he had insufficient notice of the charges against him, and (b) he had no meaningful opportunity to present his views to the prison officials charged with deciding whether to place him in administrative custody. See Hewitt v. Helms, 459 U.S. 460 (1983). Plaintiff also contends that he was denied his constitutional right to effective assistance of counsel by his pre-trial confinement at SCIH.

The underlying facts are as follows. On December 23, 1981, Plaintiff was arrested on charges of criminal conspiracy and criminal complicity. The next day he was placed in CCJ to await trial. It was at this time that one of the Defendants, CCJ Warden Harry W. Eichenlaub, was informed by the State Police of Plaintiff's alleged knowledge of the martial arts and alleged connection with the Palestinian Liberation Organization. Defendant Harry Eichenlaub's Answers to Interrogatories of Plaintiff, No. 3 (April 6, 1983). On January 8, 1982, a Friday, Eichenlaub learned from the State Police that Plaintiff allegedly had a passport to Lebanon, that his bail would be increased from $100,000. to $300,000., and that it was likely that the FBI would soon file

bank robbery charges against him. Id. The same day Eichenlaub sought and obtained the oral approval of Erskind Deramos, Deputy Commissioner of the Pennsylvania Bureau of Correction, and Clinton County President Judge Carson V. Brown to the emergency transfer of Plaintiff from CCJ to SCIH, based on the belief that Plaintiff constituted a security risk if he remained at CCJ. Id. at Nos. 5 and 7. Thus, on January 8, Plaintiff was transferred to SCIH, given a BC-141D form, and immediately placed in administrative custody. The BC-141D form indicated that Plaintiff was a security risk and would remain in administrative custody pending review by SCIH's Program Review Committee (PRC). Brief in Opposition to Plaintiff's Motion For Partial Summary Judgment and in Support

of Cross Motion of Defendants Zimmerman and Wicker for Summary Judgment, at Appendix E (Declaration of Benny E. Varner), Exhibit I (April 16, 1984). The space on the BC-141D form which provided for the date of the hearing was not filled in. Id.

On Monday, January 11, 1982, the PRC interviewed Plaintiff and informed him that Federal authorities would soon be taking him for arraignment on bank robbery charges and that he would continue to be confined in administrative custody. Id. at Appendix A (Statement of Terry W. Henry). The PRC's actions that date were based solely on documents prepared in connection with Plaintiff's transfer to SCIH that stated Plaintiff was a security risk. Id. Plaintiff, however, was never informed of the

underlying reasons for the PRC's determination that he was a security risk. Id.

This Court's standard of review of a District Court's grant of Summary Judgment is plenary. Struble v. N. J. Brewery Emp. Welfare Trust Fund, 732 F.2d 325, 330 (3d Cir. 1984). To be granted a Motion for Summary Judgment, the moving party must demonstrate that there exist no material issues of fact and that it is entitled to judgment as a matter of law. Adickes v. Kress & Co., 398 U.S. 144, 157 (1970); Fed. R. Civ. P. 56(c). Moreover, the District Court must draw all inferences from the facts in the light most favorable to the opposing party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962); Sun Revining and Marketing Co. v. Rago, 741 F.2d 670, 673 (3d Cir. 1984).

I.

In Cobb v. Aytch, 643 F.2d 946 (3d Cir. 1981), this Court stated that the transfer of a pre-trial detainee from a County Correctional facility to a Pennsylvania State Prison implicated a constitutional liberty interest of the detainee and therefore entitled him to due process of law. The Court held in Cobb that, to satisfy the requirements of due process, the State must provide a pre-trial detainee prior notice of the transfer and an opportunity to be heard by a Pennsylvania tribunal independent of the prison system. Id. at 961. If a transfer is necessitated by an emergency, however, "a prompt post-transfer hearing in a Pennsylvania tribunal independent of the prison system" will satisfy due process requirements. Id. Because the

transfer of Plaintiff in this case was the result of a perceived emergency, the failure to provide him prior notice did not constitute a denial of due process.[1]

Nevertheless, we are aware of no evidence in the record to show that Plaintiff was ever given an opportunity to be heard by a Pennsylvania tribunal independent of the prison system after his transfer to SCIH. Plaintiff was

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1It should be noted, however, that the Bureau of Correction's Directive OM-102 at III-F requires that in "cases of dire emergency, the prisoner shall be notified in writing of the transfer including the reason prior to the transfer." Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment and in Support of Cross Motion of Defendants Zimmerman and Wicker for Summary Judgment, at Appendix F (Declaration of Glen R. Jeffes), Exhibit I (April 16, 1984). Thus, it seems that the transfer here violated the Bureau of Correction's own procedures.

given a hearing before the Program Review Committee at SCIH. Yet, the Committee consists of officers of the prison and thus cannot be characterized as a tribunal independent of the prison system.[2] Therefore, the record indicates that Plaintiff was not afforded the due process protections to which a pre-trial detainee is entitled when being transferred from a County Jail to a State Correctional Institution.

Moreover, it was Defendant Eichenlaub who was responsible for ensuring that Plaintiff received his due process protections. Eichenlaub was the

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[2]The Court in Cobb suggested that an appropriate tribunal for transfer hearings was the Pennsylvania Court of Common Pleas, but that other independent tribunals may be more appropriate. Cobb v. Aytch, 643 F.2d 946, 961 (3d Cir. 1981).

person who possessed the information that served as the basis for the transfer and who sought to deprive Plaintiff of his liberty interest in remaining in the County Jail. Under the then-prevailing Pennsylvania Bureau of Correction operating procedures, County, rather than State, officials were responsible for ensuring that any due pro cess requirements relating to the transfer of inmates from County facilities were satisfied. Brief in Opposition to Plaintiff's Motion for Partial Summary Judgment and in Support of Cross Motion of Deendants Zimmerman and Wicker for Summary Judgment, at Appendix F (Declaration of Jeffes at ¶ 7) (April 16, 1984). The same obligation exists in cases of emergency transfers. Id. at ¶ 8. Therefore, we conclude, as a matter of

law, that the District Court erred in granting Eichenlaub's Motion for Summary Judgment on the issue of whether he satisfied the requirements of due process arising from the transfer of Plaintiff from CCJ to SCIH. Accordingly, we will vacate the portion of the District Court's Order which grants Defendant Eichenlaub's Motion for Summary Judgment regarding this issue.

Nevertheless, we will affirm the District Court's grant of Summary Judgment in favor of Defendants Charles Zimmerman and Emanuel Wicker regarding this claim. Neither Zimmerman nor Wicker -- both of whom were officials at SCIH -- had the authority to deny the entry into their prison of an inmate, such as Plaintiff, whose transfer was approved by the Deputy Commissioner of Correction.

Moreover, they do not have the responsibility of satisfying the due process requirements arising from a transfer of an inmate from a County Jail to their prison. Thus, they cannot be held responsible for the failure of CCJ officials to grant Plaintiff a hearing either before or after his transfer from CCJ to SCIH.

II.

In Hewitt v. Helms, 459 U.S. 460 (1983), the Supreme Court held that, given the existence of extensive regulations in Pennsylvania regarding the confinement of a State prisoner in administrative segregation, duly convicted and sentenced inmates of Pennsylvania State prisons had a constitutionally protected liberty interest in remaining in the general prison popula-

tion. 459 U.S. at 470-71. This Court has held that such an interest also applies to inmates who are pre-trial detainees. Drayton v. Robinson, 719 F.2d 1214, 1218 (3d Cir. 1983).

According to the Court in Hewitt, in order to confine an inmate in administrative segregation, the State must provide him an informal, non-adversarial, evidentiary review. Hewitt v. Helms, 459 U.S. 460, 476 (1983). The inmate must also receive "some notice" of the reasons for his confinement and an opportunity to present his views to the prison official who determines whether or not to confine him. Id. Ordinarily a written statement submitted by the inmate is sufficient. Id. If these procedures are followed and the decision makers review the reasons for confinement with

the then-available evidence, due process is satisfied. Id. The District Court held, in granting the Motion for Summary Judgment in Defendants Zimmerman and Wicker, that Defendants had satisfied the due process requirements outlined in Hewitt when they placed Plaintiff in administrative custody at SCIH.

The notice given to the inmate in Hewitt -- and held sufficient by the Court -- was a report which "briefly described the factual basis for the charge and contained a lengthy recitation of the procedures governing the institution's disciplinary hearing." 459 U.S. at 464. By contrast, in this case, Plaintiff was given a BC-141D form which merely stated "security risk" and informed him only that he would be held in administrative custody until a hearing

was held by the PRC.[3] Moreover, the inmate in Hewitt admitted that he had an opportunity to present his version of the facts, 459 U.S. at 477, whereas Plaintiff in this case was given little idea by the phrase "security risk" as to what charges he had to defend against. Thus, the record indicates Plaintiff had no meaningful opportunity to present his position. As such, we conclude on this record, as a matter of law, that the District Court erred in holding in its grant of Summary Judgment that the

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[3]Although the BC-141D form had spaces in which to write the date, time, and location of the hearing, these spaces were not filled in. Thus, it appears that Plaintiff did not receive the 24-hour written notice of hearing required by the Bureau of Correction's Directive OM-102 at III-F. Nor does it appear from the record that Plaintiff ever waived this notice.

requirements of due process specified by Hewitt were satisfied by Defendants when they placed Plaintiff in administrative custody at SCIH. Accordingly, we will vacate that portion of the District Court's Order granting the Motion for Summary Judgment on this claim made by Defendants Zimmerman and Wicker.

III.

Finally, we hold that the District Court properly granted Defendants' Motion for Summary Judgment as to Plaintiff's final claim because the evidence in the record demonstrates, as a matter of law, that Plaintiff was not denied his right to effective assistance of counsel. Plaintiff was able to effectively communicate which his attorneys during his pre-trial confinement at SCIH.

During his 30-day stay in administrative custody, Plaintiff was permitted to make two phone calls. Thee is no evidence that any emergency arose requiring him to speak with his attorneys at a time in which he did not have access to a telephone. Moreover, the record indicates Plaintiff could freely communicate, by mail, with his attorneys during his pre-trial confinement, even if his monthly allotment of free postage had been exhausted and he was without funds. Finally, Plaintiff's attorneys were free to visit him at the prison. Accordingly, we will affirm that portion of the District Court's Order granting Summary Judgment for Defendants on this claim.

IV.

In summary, we will vacate the District Court's Order granting Defendant

Eichenlaub's Motion for Summary Judgment regarding the claim arising from Plaintiff's transfer to SCIH, but we will affirm the grant of the Summary Judgment Motion by Defendants Zimmerman and Wicker with respect to this claim. We will vacate the District Court's Order granting the Summary Judgment Motion by Wicker and Zimmerman regarding the claim arising from Plaintiff's placement in administrative custody at SCIH. Finally, we will affirm the Court's grant of Defendants' Motion for Summary Judgment on Plaintiff's right-to-effective-assistnce-of-counsel claim. Accordingly, we will remand this case to the District Court for its determination of whether to grant Plaintiff's Motion for Partial Summary Judgment and/or whether to hold a trial on any of the issues raised in the

pleadings, such as issues of liability, qualified immunity, and damages.

_____

Francis L. Van Dusen
Circuit Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DAVID ALAN YURKY	:	
	:	
Plaintiff	:	
	:	
	:	CIVIL NO. 82-0663
	:	
HARRY W. EICHENLAUB, et al.	:	
	:	
	:	
Defendants	:	

MEMORANDUM AND ORDER

We consider here cross Motions for Summary Judgment filed pursuant to a pro se civil rights action based upon 42 U.S.C. §1983. We reviewed Plaintiff's financial status, granted his request to proceed in forma pauperis and ordered service of process. Plaintiff Yurky has moved only for a partial Summary Judgment based on his belief that one of his claims is not susceptible to summary

disposition. We find, however, that each of Plaintiff's claims may be so adjudicated.

In the case of a Summary Judgment Motion, the burden is on the moving party to demonstrate that he is entitled to Summary Judgment as a matter of law and that no material issues of relevant facts exist. Aidckes v. S.H. Kress & Co., 398 U.S. 144 (1970). Further, all matters presented with reference to the motion must be looked at in a light most favorable to the opposing party. U.S. v. Diebold, 309 U.S. 654 1962).

Section 1983 creates a remedy for conduct which: (1) was committed by a person acting under color of State law; and (2) deprived a Plaintiff of a right, privilege or immunity secured by the

Constitution or laws of the United States (hereinafter referred to as a "federally protected right"). Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913, 68 L. Ed. 2d 420, 428 (1981).

In order for relief to be granted against a Defendant pursuant to Section 1983, that Defendant must have actually participated in, or had actual knowledge of and acquiesced in, the conduct which resulted in a violation of the Plaintiff's federally protected right. Relief cannot be granted against a Defendant pursuant to Section 1983 based solely upon the theory of respondeat superior or the fact the Defendant was the supervisor or superior of the person whose conduct actually deprived the Plaintiff of one of his federally protected rights under color of State law.

Hampton v. Holmesburg Prison Officials, 546 F. 2d 1077 (3d Cir. 1976); Goode v. Rizzo, 560 F. 2d 542, 550 (3d Cir. 1974), rev'd on other grounds, Rizzo v. Goode, 523 U.S. 362, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976).

The uncontroverted material facts in this case are that from December 23, 1981 until January 8, 1982 Plaintiff was a pretrial detainee at the Clinton County Jail (CCJ). On January 8, 1982 Plaintiff was transferred to the State Correctional Institution at Huntingdon (SCIH) without being given a hearing wherein he might voice his opposition to said transfer. On his arrival at SCIH Plaintiff was assigned to Administrative Custody (AC) until such time as he could be taken in front of the Program Review Committee (PRC). This was accomplished

on January 11, 1982. The PRC's determination at that time was that, pending a chance to gather more information about the Plaintiff, he should remain in AC. Plaintiff did, in fact, remain in that mode of custody until February 9, 1982. During the time he was in AC Plaintiff Yurky had all the access to his attorneys permitted by Bureau of Corrections (BOC) regulations. Over three months elapsed from the time Plaintiff was released from General Population (GP) to the time (May 19, 1982) that his trial began. During all relevant times Defendant Eichenlaub was the Warden of CCJ, Defendant Wicker was Deputy Superintendent at SCIH and Defendant Zimmerman was Warden of SCIH.

Plaintiff Yurky's claim is four-pronged: that his transfer from CCJ to SCIH was violative of procedural due pro-

cess; that his assignment to Administrative Custody (AC) at SCIH was violative of procedural and substantive due process; and that his mode of incarceration at SCIH was tantamount to a denial of the 6th Amendment guarantee of effective assistance of counsel. We address these allegations against the various Defendants[1] herein seriatim.

A. Did Defendants Violate Procedural Due Process In Transferring Plaintiff To SCIH?

It is, of course, elementary that procedural due process in a criminal matter requires that the accused have notice of the nature of the charge

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[1]Defendant Eichenlaub and the "Commonwealth Defendants", Wicker and Zimmerman, have retained separate counsel. Their respective theories of defense, however, are not so dissimilar as to require separate analyses in this opinion.

against him and an opportunity to be heard thereon. Plaintiff Yurky relies on Cobb v. Aytch, 643 F. 2d 946 (1981), for the proposition that pretrial detainees retain several liberty interests relevant to place and conditions of confinement which are not available to sentenced inmates. Specifically, Plaintiff alleges that the act of Defendant Eichenlaub which precipitated his non-consenual transfer to SCIH and his acceptance there by the Commonwealth Defendants violated procedural due process requirements. Cobb, supra, does make it clear that the transfer of a detainee to a more restrictive setting

> . . . may not ordinarily be made until the untried Defendant has received notice of the proposed transfer and an opportunity to be heard in a Pennsylvania tribunal independent of the prison system in opposition to it. The injunction should, however, recognize that

> emergency situations may arise involving the security of the institution in which transfers prior to hearing must be permitted. For those cases a prompt post-transfer hearing in a Pennsylvania tribunal independent of the prison system is an appropriate accommodation between the federal liberty interest of the Defendant and the emergency security concerns of the county prisons.

Id. at 961.

The crux of Plaintiff's claim that he was not afforded procedural due process in connection with his transfer to SCIH is his contention that he was not given adequate notice as to the reason why he was transferred at the Program Review committee Hearing he was given on January 11, 1982. Plaintiff contends that a mere notification by that panel that he was a "security risk" did not comprise the type of notice contemplated by the Cobb Court. Plaintiff complains that he should have been apprised of the

underlying reasons (alleged passport to Lebanon, alleged PLO ties, alleged expertise in martial arts, alleged pendency of serious federal charges, alleged lack of security at CCJ etc.) for his characterization as a security risk.

Our interpretation of this aspect of Cobb, however, is that, in a hearing of this type, notice to a pretrial detainee need not be nearly so detailed as the notice which must necessarily be given a Defendant as to the nature of charges against him to enable him to prepare a criminal defense. Plaintiff Yurky was already validly incarcerated. A prima facie case had been found to exist against him and a factors approach had dictated that high bail, which Yurky failed to raise, be set. Reading further in the same

paragraph from Cobb on which Plaintiff would rely, we encounter an additional concept:

> We do not hold that the opportunity to be heard requires an evidentiary hearing, for in our view the pretrial detainee can be adequately heard by the pleadings. As to the content of the notice, it need only state in general terms the reason for the proposed transfer, so that the independent tribunal may weigh that reason against the degree of interference with the federally protected rights on which the detainee relies. (emphasis ours).

Id. at 961.

We find that the panel's act of informing Mr. Yurky that he was considered a security risk was just the sort of general notice mandated by the Cobb Court. The Program Review Committee was under no compulsion to catalogue for Plaintiff Yurky the facts which led to his characterization as a security risk.

Even apart from finding, as this

Court has, that notice to Plaintiff Yurky was adequate, there is nothing to indicate that the named Defendants herein deprived Yurky of any federally protected right. The record in this case amply demonstrates that Defendant Eichenlaub had a rational basis for requesting the emergency transfer of a prisoner, who, according to the information then available to Eichenlaub, provided a definite security risk in the antiquated setting of CCJ. Furthermore, Eichenlaub followed well-defined Bureau of Corrections procedure in obtaining the approval of Clinton County President Judge Carson V. Brown and Erskind Deramus, the Deputy Commissioner of the Pennsylvania Bureau of Correction, relative to Yurky's transfer to SCIH.

As to Defendants Wicker and

Zimmerman, they are vested with no authority to deny entry to any inmate whose transfer was approved by the Deputy Commissioner or his designee. Hence, they lack the degree of personal involvement in the determination of Plaintiff's place of incarceration to implicate them under 42 U.S.C. §1983.

Put succinctly then, Plaintiff's first claim is not supported by the decisional law which he, himself, relies on. Moreover, were it so, the Defendants named herein have, by acting in strict compliance with the administrative guidelines which govern their respective offices, placed themselves beyond the realm of liability under 42 U.S.C. §1983.

B. Was Plaintiff's Assignment to AC at SCIH Violative of Procedural Due Process?

Plaintiff Yurky correctly points

out that, in light of the Pennsylvania statutes and regulations setting forth the procedures for confining an inmate to administrative segregation, he did acquire a liberty interest in remaining in the general prison population. Hewitt v. Helms, _____U.S._____, 103 S. Ct. 864 (1983). From this, Yurky urges that the deprivation of any liberty interest via state action must satisfy the criteria of due process as promulgated by the 14th Amendment. While this is doubtless true, the salient question to be considered here is: What constituts appropriate due process in this situation? In speaking of the procedures required to satisfy due process under the 14th Amendment, the Supreme Court has declared in Wolff v. McDonnell, 418 U.S. 539, 560 (1974):

> The requirements requirements imposed by the Clause are, of course, flexible and variable dependent upon the particular situation being examined. (Citations). In determining what is 'due process' in the prison context, we are reminded that 'one cannot automatically apply procedural rules designed for free citizens in an open society . . . to the very different situation presented by a disciplinary proceeding in a state prison'.

It is significant that the above quotation from Wolff, supra, is cited by the Court in Hewitt, supra, the very case relied on by Plaintiff in this instance. Reading further in Hewitt we discovery that Justice Rehnquist's majority opinion holds that:

> An inmate must merely receive some notice of the charges against him and an opportunity to present his views to the prison official charged with deciding whether to transfer him to administrative segregation. Ordinarily a written statement by the inmate will accomplish this purpose, although prison administrators may find it more useful to permit oral presentations in cases where they believe a written statement would be

> ineffective. So long as this occurs, and the decisionmaker reviews the charges and then-available evidence against the prisoner, the Due Process Clause is satisfied. Hewitt v. Helms, supra, 103 S. Ct. 864 at 868 (1983).

It becomes clear that Plaintiff Yurky's reliance on Hewitt has engendered a situation in which he is "hoist on his own petard". Since the facts in this case reveal that Yurky received "some notice" of the charges against him and that the decisionmaking committee reviewed these charges and the "then-available evidence against the prisoner", Plaintiff's claim that his assignment to AC at SCIH was accomplished in derogation of procedural due process is without merit.

C. Did Plaintiff's Assignment to Administrative Custody Violate Substantive Due Process?

Plaintiff claims here that his

incarceration in AC did not comport with the substantive aspects of due process protection in that it amounted to an arbitrary government action which deprived him of a protected aspect of his liberty. Plaintiff then proceeds to state that under Pennsylvania Bureau of Corrections (BOC) regulations an inmate may be assigned to administrative custody only when he has: (A) committed a Class I misconduct, 37 Pa. Code 95.104 (b) (1); (B) been placed in investigative status "where it has been determined there is a threat of serious disturbance, or a serious threat to the individual or others", 37 Pa. Code 95.104 (b) (3); or (C) requested such confinement, 37 Pa. Code 95.104 (b) (4).

Unhappily for Plaintiff Yurky, he is mistaken in both these allegations.

Prisoners may also be assigned to AC pursuant to BOC regulations pending a determination of institutional classification. See 37 Pa. Code 95.106. The record discloses that on the day Yurky was given the PRC Hearing which resulted in his assignment to AC he was very much an unknown commodity to the reviewing committee. Nothing was known as to any psychological defects Yurky may have had which would have rendered him unfit for inclusion in the general prison population. Nothing was known as to whether he had enemies at SCIH. What was known was that federal authorities were supposed to take him for arraignment on serious charges and that very high bail had been set in his case. Under these circumstances we can hardly conclude that the PRC's determination to assign Yurky to AC was

so arbitrary as to violate his right to substantive due process.

D. Did Plaintiff's Transfer to SCIH Effectively Deny Him the Effective Assistance of Counsel?

Plaintiff's final claim is that he was denied the effective assistance of counsel which is mandated in a criminal case by the 6th Amendment. Here, again, the record compels us to disallow his claim. While the Supreme Court has never delineated how extensive a pretrial detainee's access to his attorney must be, we find that it was adequate in the instant case. Yurky seems to imply that he was being held virtually incommunicado. However, it is documented that during his brief (30 days) time in AC Yurky was permitted to make phone calls on January 10 and 25, 1982. In the same span Yurky received legal mail on five

occasions. There is no evidence that Yurky ever missed a pretrial hearing or was forced to seek a continuance -- factors which provoked the Court in Cobb v. Aytch, supra, to enjoin the transfer of county detainees into the State penal system -- due to his distance from the counsel he retained. Moreover, both of Plaintiff's lawyers worked within an hour's drive of his place of confinement and had liberal visitation privileges. In view of these facts, this Court finds that Plaintiff's access to counsel was more than adequate to meet 6th Amendment criteria.

Accordingly, the following Judgment will be entered.

Richard P. Conaboy
United States District
Judge

DATE: September 7, 1984

give consent for the transfer.

9) Upon my arrival at Huntingdon on January 8, 1982, I was placed in Administrative Custody in the Restricted Housing Unit.

10) On January 8, 1982 I was provided a document which stated "Security Risk -- See Attached." There was nothing attached to the document I received.

11) On January 11, 1982, I was interviewed by the Program Review Committee.

12) At my interview on January 11, 1982, I was never apprised by the Program Review Committee as to the reasons for my transfer. I never learned of any underlying reasons such as alleged P.L.O. ties, alleged martial arts, alleged passport to Lebanon, until the discovery process in this civil action.

13) At the interview on January 11, 1982, the P.R.C. informed me that Federal authorities would take me for arraignment on new charges and that I would be confined in Administrative Custody Maximum of the Restricted Housing Unit.

14) Prior to, during, and after my interview by the P.R.C. on January 11, 1982, I was never advised as to any justification underlying my label of "security risk."

15) I did not commit any Class I misconduct nor did I request confinement in Administrative Custody.

I declare under penalty of perjury that the foregoing facts are true and

correct, based upon my own personal knowledge.

/s/ David Alan Yurky
David Alan Yurky, Plaintiff

28 March, 1984

/s/ Richard I. Norris
Richard I. Norris, Notary Public
Smithfield Twp., Huntingdon County
My Commission Expires June 4, 1984
Member, Pennsylvania Association of Notaries

(Title Omitted in Printing)

SECOND AFFIDAVIT OF DAVID YURKY

I, David Yurky, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am the Plaintiff in this case and was a pretrial detainee at all times relevant to this civil action.

2. In addition to the interference with my defense preparation cited in my Affidavit of David Yurky attached to Plaintiff's Brief in Opposition to Cross-motion of Zimmerman & Wicker for Summary Judgment, I would also assert that as a result of this interference I was unable to contact a material witness for my preliminary hearing in Centre County.

3. I also was unable to contact character witnesses for my bail reduction hearing; which as a result, my bail was not significantly reduced.

4. The Pennsylvania Bureau of Corrections provides ten free letters a month to each prisoner. Once those ten letters (or comparable postage) is mailed, the prisoner must purchase any subsequent envelopes from the commissary if he has the funds.

5. Following my arraignment before the Court January 26, 1982 in Clinton County, my attorney had seven days to file a Motion for a Bill of Particulars. The public defender at the preliminary hearing was was thus unfamiliar with the case. In this particular instance, I was denied a request to call my attorney and had used my ten Commonwealth letters and

was therefore unable to communicate in any form with counsel. The Bill of Particulars Motion subsequently suffered because of lack of specificity and the indictment and District Attorney's presentation was not adequately clarified until trial.

/s/ David Yurky
David Yurky

(Title Omitted in Printing)

DECLARATION OF CHARLES H. ZIMMERMAN

I, CHARLES H. ZIMMERMAN, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am currently employed by the Pennsylvania Bureau of Correction (BOC) as Superintendent of the State Correctional Institution at Graterford, Pennsylvania (SCI-G) and have been so employed since August, 1983.

2. Immediately prior to my current employment, I was employed by the BOC as Superintendent of the State Correctional Institution at Huntingdon, Pennsylvania (SCI-H) and occupied that position since June, 1980.

3. As Superintendent at SCI-H, I did not have any authority to approve the transfer of any inmate from a county facility to SCI-H. All such transfers were made by the BOC's Deputy Commissioner of Correction (hereinafter "Deputy Commissioner") or his designee.

4. I have never been the Deputy Commissioner's designee for purposes of transferring prisoners from county to state facilities, or vice versa, nor for the transfer of inmates from one state institution to another.

5. As Superintendent at SCI-H, I had no authority or discretion to refuse receipt of any inmate whose transfer to SCI-H was approved by the Deputy Commissioner or his designee, nor did I have any authority to direct any of my

subordinates to refuse receipt of any such person.

6. As Superintendent at SCI-H, I oversaw the administration and operation of that correctional institution and was personally familiar with standard administrative practices within the institution.

7. For all times relevant to this matter, it was standard procedure at SCI-H that the Program Review Committee (PRC) did not meet on weekends.

8. At no time prior to service of the complaint in this matter did I ever have or receive any communication from Mr. Yurky regarding his placement in AC from January 8, 1982 to February 9, 1982.

9. I harbour no ill will toward the plaintiff and, at all times, I have acted

in the good faith belief that my actions were lawful.

_____

Charles H. Zimmerman

Executed on: _____

(Title Omitted in Printing)

DECLARATION OF CHARLES H. ZIMMERMAN

I, CHARLES H. ZIMMERMAN, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am presently the Superintendent of the State Correctional Institution at Graterford (SCI-G).

2. For all times relevant to the above-captioned action, I was Superintendent for the State Correctional Institution at Huntingdon (SCI-H).

3. I previously executed an unsworn declaration relative to this matter on April 13, 1984.

4. As Superintendent of SCI-H, I was personally familiar with the institu-

tion's policy relating to the posting of inmates' legal mail.

5. For all times relevant to this action, the following was the legal mailing policy in effect at SCI-H: when an inmate wished to send legal mail but had exhausted his monthly allotment of free postage and had no funds in his personal account to pay for such postage, his legal mail was posted and the charge therefor was entered against his inmate account to be assessed at a later date when funds were placed in his account. No limit was placed on the amount of postage which could be charged against an inmate's account in such circumstances.

6. Pursuant to the previously-described procedure, an inmate could send whatever legal mail he chose even though

he had already exhausted his free postage allotment and had no personal funds to pay for the same.

/s/ Charles H. Zimmerman
Charles H. Zimmerman

Executed on: _____

Sworn and subscribed before me this 29th day of May, 1984.

/s/ Michael J. Cappo
Michael J. Cappo, Notary Public
Graterford, Montgomery County, PA
My Commission Expires April 15, 1985

(Title Omitted in Printing)

DEFENDANT HARRY W. EICHENLAUB'S
RESPONSE TO DECLARATION OF
DEFENDANT CHARLES H. ZIMMERMAN

Defendant Harry W. Eichenlaub, by his attorneys Candor, Youngman, Gibson & Gault, respectfully submits the following response to Declaration of Defendant Charles H. Zimmerman:

1. Paragraphs 1 through 3, and 7 through 9, inclusive, are admitted.

2. Paragraphs 4, 5 and 6 are denied for the reason that after reasonable investigation, Defendant Harry W. Eichenlaub is without sufficient knowledge or information to form a belief as to the truth of the averment and the said is, therefore, denied.

CANDOR, YOUNGMAN, GIBSON & GAULT

By /s/ John C. Youngman, Jr.
John C. Youngman, Jr.
I.D. No. 07582
Attorneys for Defendant
Harry W. Eichenlaub

(Title Omitted in Printing)

DECLARATION OF EMANUEL C. WICKER

I, EMANUEL C. WICKER, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am employed by the Pennsylvania Bureau of Correction (BOC) as Deputy Superintendent for Operations at the State Correctional Institution at Huntingdon, Pennsylvania (SCI-H) and have been so employed for all times relevant to this action.

2. As Deputy Superintendent for Operations at SCI-H, I do not now nor have I ever had any authority to approve the transfer of any inmate from a county correctional facility to a state institution.

3. At no time have I ever been the designee of the Deputy Commissioner of Correction with respect to the approval of inmate transfers from county facilities to SCI-H, or vice versa, nor have I ever been designated to authorize the transfer of inmates from one state institution to another.

4. As Deputy Superintendent of Operations, I routinely maintain copies of any requests directed to me by inmates.

5. I have no record of ever having received any request from David Alan Yurky seeking permission to place additional phone calls during his confinement in Administrative Custody from January 8, 1982 to February 9, 1982, nor any request to be released from such custody because federal authorities were not in fact

going to arrive at SCI-H to take him for arraignment on federal charges.

6. I harbour no ill will toward the plaintiff and, at all times, I have acted in the good faith belief that my actions were lawful.

/s/ Emanuel C. Wicker
Emanuel C. Wicker

Executed on: 4-13-84

(Title Omitted in Printing)

DEFENDANT HARRY W. EICHENLAUB'S RESPONSE TO DECLARATION OF DEFENDANT EMANUEL C. WICKER

Defendant Harry W. Eichenlaub, by his attorneys Candor, Youngman, Gibson & Gault, respectfully submits the following response to Declaration of Defendant Emanuel C. Wicker:

1. Paragraphs 1, 4, 5 and 6 are admitted.

2. Paragraphs 2 and 3 are denied for the reason that after reasonable investigation, Defendant Harry W. Eichenlaub is without sufficient knowledge or information to form a belief as to the truth of the averment and the said is, therefore, denied.

CANDOR, YOUNGMAN, GIBSON & GAULT

By /s/ John C. Youngman, Jr.
John C. Youngman, Jr.
I.D. No. 07582
Attorneys for Defendant
Harry W. Eichenlaub

(Title Omitted in Printing)

RESPONSE TO DEFENDANTS ZIMMERMAN AND WICKER TO PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS MATERIAL

In accordance with the provisions of M.D. Pa. 401.4, defendants Zimmerman and Wicker, by their attorneys, submit the following response to plaintiff's Statement of Undisputed Facts:

1. Defendants are without sufficient knowledge or information so as to be able to admit or deny the statements contained in this paragraph.

2. Admitted that on January 8, 1982, plaintiff was incarcerated in the Clinton County Jail as a pretrial detainee awaiting disposition of criminal charges. Defendants are without sufficient knowledge or information so as to be able

to admit or deny the remainder of the statements in this paragraph.

3. Defendants are without knowledge or information sufficient to admit or deny the statements contained in this paragraph.

4. Defendants are without knowledge or information sufficient to admit or deny the statements contained in this paragraph.

5. Admitted.

6. Defendants are without knowledge or information sufficient to admit or deny the statements contained in this paragraph.

7. Defendants are without knowledge or information sufficient to admit or deny the statements contained in this paragraph.

8. Admitted that at no time after transfer to the State Correctional Institution at Huntingdon (SCI-H), plaintiff never gave consent for his transfer to that institution. Defendants are without sufficient knowledge or information to be able to admit or deny the remainder of the statements in this paragraph.

9. Admitted.

10. Admitted.

11. Admitted.

12. Denied that plaintiff was never told the reason for his transfer. In fact, plaintiff was told that he was transferred as a security risk, to SCI-H, by the Program Review Committee. Admitted that plaintiff was never told the underlying reasons for his transfer by the Program Review Committee.

13. Admitted that at his January 11, 1982 interview with the Program Review Committee, plaintiff was told that federal authorities would be taking him for arraignment on bank robbery charges, and that he would remain in the Administrative Custody (Maximum) area of the Restricted Housing Unit. Denied that was the sole information told to plaintiff. Plaintiff, in fact, was told that he had been transferred to SCI-H as a security risk.

14. Admitted that during plaintiff's interview with the Program Review Committee on January 11, 1982, plaintiff was never advised as to the underlying reasons for the county's description of him as a security risk. Defendants are without sufficient information to be able

to admit or deny the remaining statements in this paragraph.

15. Admitted that the Bureau of Correction JBC-7X and JCB-185 forms were the documents which served as the basis for describing plaintiff as a "security risk" on the BC-141D form given him on January 8, 1982.

16. Admitted that for all times relevant to this action, plaintiff never committed a Class I misconduct while at SCI-H, nor did he ever request confinement in Administrative Custody.

Respectfully submitted,

LEROY S. ZIMMERMAN
Attorney General

By /s/ Amy Zapp
Amy Zapp
Deputy Attorney General

ALLEN C. WARSHAW
Deputy Attorney General
Chief, Litigation Section

Date: April 16, 1984

(Title Omitted in Printing)

RESPONSE TO STATEMENT OF
UNDISPUTED FACTS OF PLAINTIFF YURKY

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Denied. After reasonable investigation, Defendant Harry W. Eichenlaub is without knowledge or information sufficient to form a belief as to

the truth of the averment and the said is, therefore, denied.

13. Denied. After reasonable investigation, Defendant Harry W. Eichenlaub is without knowledge or information sufficient to form a belief as to the truth of the averment and the said is, therefore, denied.

14. Denied. After reasonable investigation, Defendant Harry W. Eichenlaub is without knowledge or information sufficient to form a belief as to the truth of the averment and the said is, therefore, denied.

15. Denied. After reasonable investigation, Defendant Harry W. Eichenlaub is without knowledge or information sufficient to form a belief as to

the truth of the averment and the said is, therefore, denied.

16. Admitted.

CANDOR, YOUNGMAN, GIBSON & GAULT

By /s/ John C. Youngman, Jr.
John C. Youngman, Jr.
I.D. No. 07582
Attorneys for Defendant
Harry W. Eichenlaub

(Title Omitted in Printing)

DECLARATION OF CURTIS C. CARSON

I, CURTIS C. CARSON, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am employed by the Pennsylvania Bureau of Correction (BOC) as Corrections Records Supervisor at the State Correctional Institution at Huntingdon, Pennsylvania (SCI-H).

2. In that capacity, I am the custodian of the JBC-15 records jackets routinely maintained for each of the inmates incarcerated at SCI-H and am responsible for supervising the collection and compilation of documents routinely placed in the inmates' records jackets.

3. Each time an inmate is transferred from a county facility to SCI-H, the following forms are prepared relating to that transfer and are subsequently placed in the inmate's institutional file: JBC-7X (Temporary Transfer Information); JBC-185 (Transmittal Data for County Prison Transfer), and JBC-5B (Petition for Transfer: County Prisons).

4. Each time an inmate is placed in Administrative Custody (AC), a BC-141D form is prepared and a copy placed in the inmate's JBC-15 records jacket.

5. A document routinely filed in the JBC-15 records jacket is the Cumulative Adjustment Record (BC-14) on which, inter alia, any action by SCI-H's Program Review Committee (PRC) involving the inmate is routinely recorded.

6. Another document routinely filed

in the JBC-15 records jacket is an Adjustment Record (AR) on which information pertinent to an inmate's confinement in the institution's Restricted Housing Unit (RHU), including any telephone calls permitted and legal mail received is routinely recorded. Receipt of legal mail is ordinarily recorded on the AR by placing an "L" in the "Mail" block found in the upper portion of the form for the appropriate day.

7. Entries on the JBC-7X, JBC-185, JBC-5B, JBC-14, and AR are made at or near the time of the occurrence of the event recorded.

8. Each of the foregoing entries is made by a person having personal knowledge of the information recorded or by a person to whom the information recorded has been transmitted by a person

having personal knowledge of the same.

9. A true and correct copy of the JBC-7X prepared in connection with David Alan Yurky's transfer from the Clinton County Jail (CCJ) to SCI-H on January 8, 1982, is attached hereto as Exhibit I.

10. A true and correct copy of the JBC-185 prepared in connection with such transfer is attached hereto as Exhibit II.

11. A true and correct copy of the JBC-5B prepared in connection with such transfer is attached hereto as Exhibit III.

12. A true and correct copy of Yurky's BC-14 for the months of January and February, 1982, is attached hereto as Exhibit IV.

13. A true and correct copy of

Yurky's AR for the same time period is attached hereto as Exhibit V.

14. A true and correct copy of a BC-141D dated January 8, 1982 (relating to Yurky's placement in AC on that day) is attached hereto as Exhibit VI.

15. The attached documents indicate as follows:

a. Yurky was transferred to SCI-H from CCJ on January 8, 1982, as a security risk and the recommended confinement at SCI-H was "maximum security."

b. At the time of his transfer on that date, Yurky was a pre-trial detainee.

c. Upon arrival at SCI-H, Yurky was placed AC (Maximum) pending his being seen by the PRC.

d. Yurky was seen by the PRC on January 11, 1982.

e. Yurky's confinement in AC (Maximum) was continued by the PRC on that date.

f. Yurky was interviewed by the PRC on February 9, 1982, and was released from Administrative Custody to the general population.

g. During the time Yurky was in AC from January 8, 1982 until February 9, 1982, he was permitted phone calls on two occasions, specifically on January 10 and January 25, 1982.

h. During the same time period, Yurky received legal mail on five different dates: January 16, 23, 29, 30, and February 6, 1982.

/s/ Curtis C. Carson
Curtis C. Carson

Executed on: 4/13/84

BEST AVAILABLE COPY

FORM IS TO BE FORWARDED TO AUTHORITIES ACCEPTING TEMPORARY CUSTODY OF RESIDENTS)

-121-

SCIH

FROM: CLINTON COUNTY JAIL
(SEE INSTRUCTIONS BELOW)

Name: YURKY, DAVID ALLEN AGE: 30

Home Address: P.O. BOX 415 STATE COLLEGE PA.

Charge: CRIMINAL CONSPIRACY, CRIMINAL COMPLICITY

Sentence: WAITING TRIAL Bill & Term No.

Minimum Date: Maximum Date:

Detainer (s): F.B.I WILL BE TAKING MR YURKY ON 1/11/82 TO BE ARRAIGNED ON CHARGES OF BANK ROBBERY

The above named person is being transferred on 1/8/82 for the purpose of SECURITY RISK --

To assist in supervising this resident while in your custody, the following information is furnished:

Custodial Classification: MAXIMUM SECURITY

Special Problems: NONE KNOWN

Medical Information: NONE

Recommendations:

DATE: 1/8/82

SIGNATURE: Robt G. Miller

TITLE: ASST WARDEN
RECORD OFFICER

INSTRUCTIONS: THIS FORM IS TO BE GIVEN TO THE OFFICERS ASSUMING CUSTODY OF RESIDENT FOR DELIVERY TO THE COGNIZANT AUTHORITY. PREPARE IN DUPLICATE, RETAIN COPY FOR RECORD JACKET.

SIGNATURE: Robt G. Miller

TITLE: ASST/WARDEN

(Title Omitted in Printing)

DECLARATION OF GLEN R. JEFFES

I, GLEN R. JEFFES, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am presently employed by the Commonwealth of Pennsylvania as Acting Commissioner of Correction and have been so employed since July, 1983.

2. In that capacity, I am responsible for the operation and administration of the Pennsylvania Bureau of Correction (BOC).

3. Prior to assuming the duties of Acting Commissioner, I was employed by the BOC for approximately 11 years in various capacities including Deputy Superintendent at the State Correctional

Institution at Rockview, Superintendent at the State Correctional Institution at Dallas, and as Acting Superintendent of the State Correctional Institution at Graterford.

4. Both in my present capacity and in my prior positions with the BOC, I am, and was, personally familiar with administrative directives routinely issued by the BOC setting forth standard operational procedures to be observed in a variety of situations.

5. Procedures in force during January, 1982 pertaining to the transfer of inmates held in county correctional facilities to state correctional institutions were set forth in Administrative Directive OM-102 (dated August 10, 1981).

6. A true and correct copy of OM-102 is appended hereto as Exhibit I.

7. Pursuant to the procedures set forth in OM-102, it was the responsibility of the transferring county officials to ensure that any hearing which may have been required in connection with the transfer of an inmate from a county facility to a state institution was held.

8. The same obligation endured in situations where the inmate was transferred on an emergency basis to a state institution, a contingency which is referenced in Part III, Paragraph F of OM-102.

9. The statement contained in such paragraph that "[t]he required hearing procedures before the Program Review Committee [PRC], including 24 hour written notice in advance of the hearing shall be accomplished by the receiving institution in a timely manner," did not

relieve the county officials from providing a transfer-related hearing, if such was mandated by the particular circumstances of the transfer. Rather, the foregoing statement referred to the hearing to be conducted by the receiving institution which is described in Part IV, Paragraph B(3) of OM-102 for the purpose of evaluating the inmate transferred and assigning institutional quarters.

10. Additionally, pursuant to the procedures contained in OM-102, specifically in Part IV, Paragraph B(3) thereof, inmates transferred to state institutions from county facilities were routinely placed in Administrative Custody upon reception at the state institution until such time as they could be seen by the

PRC for appropriate evaluation and quarters assignment.

/s/ Glen R. Jeffes
Glen R. Jeffes

Executed on: April 13, 1984

/s/ Rosalie Alberta Schell
Rosalie Alberta Schell
Notary Public
My Commission Expires April 11, 1985
Harrisburg, Pa. Dauphin County

(Title Omitted in Printing)

DECLARATION OF BENNY E. VARNER

I, BENNY E. VARNER, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am currently employed by the Pennsylvania Bureau of Correction (BOC) as a Corrections Officer III (Lieutenant) at the State Correctional Institution at Huntingdon, Pennsylvania (SCI-H) and was so employed on January 8, 1982, and for all intervening times.

2. On January 8, 1982, in accordance with the then applicable standard institutional procedures, I prepared a BC-141D form relating to the placement of David Alan Yurky, an inmate received at SCI-H on that date as an HVA (Hold for Various

Authorities), in Administrative Custody (AC). A true and correct copy of that BC-141D is appended hereto as Exhibit I.

3. I prepared such form at approximately 9:00 p.m., which was close to the time Yurky entered SCI-H.

4. To the best of my recollection, I appended the JBC-7X (Temporary Transfer Information) and JBC-185 (Transmittal of Data for County Prison Transfer) forms which accompanied the inmate to the BC-141D.

5. In accordance with the then prevailing standard procedure, copies of the attachments to the BC-141D were not appended to the copy of the BC-141D given the inmate.

/s/ Benny E. Varner
Benny E. Varner

Executed on: 4-13-84

ARTERS	Assignment: -115a-	Place of Misconduct	

OTHER INMATES OR STAFF INVOLVED OR WITNESSES (CHECK I OR W)

BC Number	Name	I	W	BC Number	Name	I	W

CONDUCT

FF MEMBER'S VERSION SECURITY RISK
SEE ATTACHED

EDIATE ACTION TAKEN AND REASON CONFINED TO ADMINISTRATIVE
VSTODY UNIT SEEN BY PROGRAM REVIEW
COMMITTEE.

STAFF MEMBER REPORTING MISCONDUCT SIGNATURE AND TITLE	ACTION APPROVED BY RANKING C.O. ON DUTY SIGNATURE AND TITLE	DATE AND TIME INMATE GIVEN COPY	
		DATE	TIME 24 HOUR BASE
D. Varner COII	Capt R.A. Clement	1-8-82	2:00 hrs

ring Date	Hearing Time	Location of Hearing	Misconduct Category	Signature of Person Serving Notice
			☐ Class I ☐ Class 2	COI

NOTICE TO INMATE

are scheduled for a hearing on this allegation on the date and the time indicated or as soon thereafter as possible. You may remain silent, u wish, and anything you say will be used against you both at the hearing and in a court of law if this matter is referred for criminal ecution. If you choose to remain silent, the hearing committee may hold your silence against you, but they must have some other evidence se your silence in order to find you guilty. If you indicate that you wish to remain silent, you will be asked no further questions.

may be represented by another inmate of general population status or a member of the institutional staff at your hearing.

may request witnesses who will be permitted to testify at the hearing provided they are willing, relevant and do not create a security rd; relevancy and security will be determined by the chairman of the hearing committee.

u wish to take advantage of either or both of these choices, please notify the chairman of the hearing committee in writing immediately on orm provided.

☐ If this block is checked and you are found guilty of the above described misconduct, the hearing committee may suspend or revoke your pre-release status.

T - BC 18 - YELLOW - DEPUTY SUPERINTENDENT'S COPY - STAFF MEM

BEST AVAILABLE COPY

(Title Omitted in Printing)

DECLARATION OF TERRY W. HENRY

I, TERRY W. HENRY, do hereby state under penalty of perjury that the following is true and correct based upon my personal knowledge:

1. I am employed by the Pennsylvania Bureau of Correction (BOC) as Director of Treatment at the State Correctional Institution at Huntingdon, Pennsylvania (SCI-H) and was so employed on January 11, 1982, and for all intervening times.

2. On January 11, 1982, I served as a member of the Program Review Committee (PRC) at SCI-H.

3. Each time the PRC takes an action involving a prisoner, a brief description of the action is recorded on the inmate's BC-14 (Cumulative Adjustment Record).

4. A true and correct copy of that portion of David Alan Yurky's BC-14 encompassing January 11, 1982 is attached hereto as Exhibit I.

5. That document reveals that: (a) on January 11, 1982, Yurky was being held at SCI-H as an HVA (Hold for Various Authorities); (2) he was personally interviewed by the PRC on that date; (3) Yurky was advised at his PRC hearing that the PRC had information that federal authorities would be arriving the same day to take him for arraignment on bank robbery charges; and, (4) he was also told that his housing status at SCI-H would continue as Administrative Custody (Maximum).

6. To the best of my recollection, the only information the PRC had on that date regarding Yurky was that contained

on the JBC-7X and JBC-185 forms prepared in connection with his transfer to SCI-H.

7. The PRC's actions that date were, to the best of my recollection, based solely on those documents.

8. To the best of my recollection, during his interview with the PRC on January 11, 1982, Yurky was advised that he had been transferred to SCI-H as security risk, but since no other information was contained on the JBC-7X and JBC-185 forms, none of the underlying reasons for such classification were discussed with him.

9. Based on the available information, the PRC believed that Yurky's placement in AC (Maximum) was indicated until such time as his conduct could further be evaluated and a determination

made as to the degree of supervision and structure necessary.

/s/ Terry W. Henry
Terry W. Henry

Executed on: 4/13/84

CUMULATIVE
ADJUSTMENT RECORD

COMMONWEALTH OF PENNSYLVANIA
BUREAU OF CORRECTION

SCIH
Institution

Institutional Number	PBP Number	Name
50471		Yurky

DATE	OBSERVATION	
1-11-82	PRC Received from Clinton County Held for Clinton Co. Fed Authorities will be here to take him ATA today. No Pay (Assign AC Max) Review 2-10-82	/s/ JAD /s/ TWH /s/ ECS
1-14-82	Yurky is still here - AC Max. Assigned to Mr. Thomas.	/s/ BKS
1-20-82	Reviewed file. Contacted Blk officers. They report that Yurky is doing well.	/s/ JT
1-25-82	COUNSELOR'S WEEKLY RHU INTERVIEW Is anxious to move to AC close. Counselor recommend this A.S.A.P. Appears to be making an acceptable adjustment. He claims he is trying to make bail.	/s/ JT
2-1-82	COUNSELOR'S WEEKLY RHU INTERVIEW No reason to keep him in A.C. Max. Recommend transfer to A.C. close.	/s/ JT
2-4-82	PROGRAM REVIEW COMMITTEE CASE REVIEW	/s/ awg

August 10, 1981

SUBJECT: County Prison Transfers

TO: Superintendents
Wardens and Sheriff-Wardens of
County Prisons and Jails

Dear Correctional Administrators:

I. PURPOSE

This Administrative Memorandum establishes the official policies and procedures to be used in handling HVA cases, consistent with current law and procedures prescribed by the Third Circuit Court of Appeals.

II. SCOPE

The procedures described in this memorandum apply to all county prisons and jails and to all correctional facilities operated by the Bureau of Correction.

III. PROCEDURES FOR TRANSFER

County prisons and jails may request the transfer of prisoners to the institutions of the Bureau of Correction for reasons of overcrowding, security, medical purposes, or other existing conditions when the prison cannot furnish proper and sufficient accommodations for the care, custody, control, and safety of the inmates. Specific procedures must be followed.

A. Requests for transfer shall be initiated by the county prison and shall be submitted to the Deputy Commissioner of the Bureau of Correction (or designee). Forms required in this process include: JBC-5B,

Petition for Transfer - County Prisons; and the JBC-185, Transmittal of Data for County Prison Transfer. The completed forms and a short narrative indicating the reason for requesting the transfer, including any special considerations such as age or physical condition of the inmate, shall be submitted to the Bureau of Correction. The JBC-5B must be signed by a Judge of the Court of Common Pleas of the county in which the prisoner is confined prior to submission to the Bureau of Correction.

B. The Bureau of Correction shall review the request and return

the JBC-5B to the county prison with approval or disapproval. Medical transfer shall be reviewed by the Chief of Health Care Services of the Bureau of Correction to determine availability of medical services in the state correctional institution.

C. The status of the prisoner shall be determined by the warden and the appropriate procedures implemented.

1. Unconvicted prisoners may give their written consent to be transferred. If such written consent is not obtained, a hearing must be conducted. The prisoner must be given written

notice of the hearing 24 hours in advance including the reason for the proposed transfer. A judge of the Court of Common Pleas of the county in which the prisoner is confined must sign the JBC-5B.

2. Convicted but unsentenced prisoners shall be processed in the same manner as in 1. above.

3. Sentenced prisoners (sentenced to the county facility) must be given notice of the fact that a transfer will occur including a general statement of the reasons for the transfer. A judge of the

Court of Common Pleas of the county in which the prisoner is confined must sign the JBC-5B. It is not necessary to request the consent of the prisoner, nor is it necessary to hold a hearing.

D. The warden shall arrange transportation of the prisoner with the sheriff. Sentenced prisoners approved for transfer and those committed under Rule 1403 of the Pa. Rule of Crim. Proc. shall be delivered to a designated diagnostic-classification center and processed accordingly. Those prisoners who are untried or unsentenced shall be delivered

to a designated state correctional institution.

E. The warden shall complete the JBC-7X, Temporary Transfer Information. This form and documents verifying prisoner consent or the proper hearing procedures must accompany the prisoner to the state facility. A photocopy of the commitment order (for sentenced prisoners) must also be included. Only the JBC-7X is required for sentenced prisoners. The Bureau of Correction shall not accept a county prison transfer without these documents.

F. Emergency transfers may be approved orally by the Deputy Commissioner with all of the

above procedures accomplished after-the-fact. In such cases of dire emergency, the prisoner shall be notified in writing of the transfer including the reason prior to the transfer. The required hearing procedures before the Program Review Committee, including 24 hour written notice in advance of the hearing shall be accomplished by the receiving institution in a timely manner. The inmate may waive the 24 hour advance notice in writing.

G. If deemed necessary, a county prisoner may be transferred to another state correctional institution utilizing regular Bureau of Correction inter-

institutional transfer procedures.

IV. PROCEDURES FOR RECEPTION AT A STATE FACILITY

A. Identification: Upon reception, the usual identification procedures shall be accomplished, including the issuing of an identification number. The number to be issued is to be taken sequentially from the special number series designated for HVA cases. Sentenced prisoners or those committed under 61 P.S. §81 shall be issued a regular BC number and processed in accordance with usual diagnostic center procedures.

B. Housing:

1. HVA cases received as medical transfers shall be placed in the hospital or infirmary.
2. HVA cases received under Rule 1043 of Pa. Rule of Crim. Proc. shall be housed in the diagnostic center.
3. All other HVA cases shall initially be placed in Administrative Custody pending evaluation and hearing by the PRC to determine appropriate housing. The inmate shall be given written notice of the hearing at least 24 hours in advance. The inmate may waive such

notice in writing. The hearing shall be held as soon as practical after reception.

4. If the inmate has been sentenced to a time certain period of confinement in disciplinary custody by the county facility prior to his transfer to state custody, the inmate may serve the balance of the period of disciplinary custody imposed by the county in disciplinary custody in the state institution or facility. The misconduct review procedure set forth in BC-ADM 801

shall be made available to such an inmate.

C. Intake Procedures: Unless the inmate is to remain in state custody only for a very short period of time, regular intake procedures for new receptions shall be followed. Inmates shall not be denied placement in general population for the sole reason that they are HVA's.

D. Medical:

Medical treatment shall be provided to HVA cases in the same manner as for sentenced inmates. Should medical treatment outside of the institution be necessary, the committing county shall be notified and

billed accordingly for additional expenses incurred. When the medical director determines that no further care in a state institution is required, a written statement shall be provided to the Record Office, and the inmate shall be returned to the county facility from which he came.

E. Program Participation and Work: HVA cases may be included in programs consistent with the program level assigned. Unsentenced inmates shall not be required to work, but may be assigned jobs upon written request. Pay shall be consistent with provisions of the Inmate Compensation System.

F. Handling Personal Property:

1. Medical Cases:

a. Upon reception from the county, all personal property shall be inventoried and processed in accordance with Bureau of Correction procedures.

b. The inmate shall be permitted to retain items specifically permitted in our institutions which can be adequately inspected for contraband and in keeping with his medical condition, custody status and housing assignment.

c. The remaining items shall be packed and stored at the institution.

d. As medical HVA's are to be returned to the county upon completion of medical treatment, all personal property shall be returned with the inmate at that time.

2. Other HVA's:

a. Upon reception from the county, all personal property shall be inventoried and processed in accordance with Bureau of Correction procedures.

b. The inmate shall be permitted to retain those items specifically permitted in our institutions consistent with custody status and housing assignment which can be adequately inspected for contraband.

c. The remaining items shall be packed and stored at the institution.

d. A reasonable amount of personal outer clothing should be washed/cleaned and stored by the institution for use by the

inmate for future ATA releases. The institution should determine what is a reasonable amount taking into consideration the condition of the clothing and season of the year.

e. Upon notification that an HVA case is to be released ATA, he shall be required to pack the personal property in his possession in accordance with OM-102, Chapter V, Supplement 1. He may take with him necessary personal hygiene items, prescribed medication

for a 24 hour period, legal materials and personal outer clothing.

f. The inmate shall be advised that his remaining personal property shall be held at the institution until his return or if the disposition of his case results in his not being returned to the Bureau of Corrrection, upon written request will be shipped to him at his expense.

g. Should the disposition of his case result in his sentence to a

diagnostic center in the Bureau of Correction upon completion of classification and after transfer to his assigned institution, it shall be the responsibility of the inmate to notify the institution holding his personal property. It shall then be shipped to him via Bureau transportation.

G. A state prisoner serving a sentence with a total maximum of five (5) years or less may be considered for transfer to a county facility for protective purposes or in special instan-

ces here a specific program such as work release may be available and justified in an individual program effort. Such transfers will be processed through the Deputy Commissioner or his designee utilizing the JBC-5B Petition for Transfer County Prisons), and JBC-185 (Transmittal of Data for County Prison Transfer).

V. This Administrative Memorandum supersedes all previous communique on this subject and shall become effective immediately. It replaces

Chapter VI section 01 of the OM-102 Classification Manual.

Sincerely,

/s/ Ronald J. Marks
Ronald J. Marks
Commissioner

RJM:jb

cc: Deputy Commissioner
Bureau Directors
L. Smith
D. Gearhart
S. Sturgis
L. Hewitt
K. Robinson
J. Smith

FORM BC-141D PART 1

☐ MISCONDUCT REPORT ☒ OTHER

COMMONWEALTH OF PENNSYLVANIA
BUREAU OF CORRECTION

№ 157364

BC Number	Name	Institution	Misconduct Time 24 Hr. Base	Misconduct Date
	YURKY, DAVID	SCIH	2100	1-8-82

QUARTERS	Assignment	Place of Misconduct

OTHER INMATES OR STAFF INVOLVED OR WITNESSES (CHECK I OR W)

BC Number	Name	I	W	BC Number	Name	I	W

MISCONDUCT

STAFF MEMBER'S VERSION SECURITY RISK
SEE ATTACHED

IMMEDIATE ACTION TAKEN AND REASON CONFINED TO ADMINISTRATIVE CUSTODY UNTIL SEEN BY PROGRAM REVIEW COMMITTEE

STAFF MEMBER REPORTING MISCONDUCT SIGNATURE AND TITLE	ACTION APPROVED BY RANKING C.O. ON DUTY SIGNATURE AND TITLE	DATE AND TIME INMATE GIVEN COPY DATE	TIME 24 HOUR BASE
B. Varner COII	Capt. R. [illegible]	1-8-82	2100 hrs

Hearing Date	Hearing Time	Location of Hearing	Misconduct Category	Signature of Person Serving Notice
			☐ Class 1 ☐ Class 2	[illegible] COI

NOTICE TO INMATE

You are scheduled for a hearing on this allegation on the date and the time indicated or as soon thereafter as possible. You may remain silent, if you wish, and anything you say will be used against you both at the hearing and in a court of law if this matter is referred for criminal prosecution. If you choose to remain silent, the hearing committee may hold your silence against you, but they must have some other evidence besides your silence in order to find you guilty. If you indicate that you wish to remain silent, you will be asked no further questions.

You may be represented by another inmate of general population status or a member of the institutional staff at your hearing.

You may request witnesses who will be permitted to testify at the hearing provided they are willing, relevant and do not create a security hazard; relevancy and security will be determined by the chairman of the hearing committee.

If you wish to take advantage of either or both of these choices, please notify the chairman of the hearing committee in writing immediately on the form provided.

☐ If this block is checked and you are found guilty of the above described misconduct, the hearing committee may suspend or revoke your pre-release status.

BEST AVAILABLE COPY

FORM JBC-7X

TEMPORARY TRANSFER INFORMATION

(THIS FORM IS TO BE FORWARDED TO AUTHORITIES ACCEPTING TEMPORARY CUSTODY OF RESIDENTS)

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF JUSTICE
BUREAU OF CORRECTION

TO: SCIH

FROM: CLINTON COUNTY JAIL
(SEE INSTRUCTIONS BELOW)

RE: Name: YURKY, DAVID ALLEN AGE: 30

Home Address: P.O. BOX 415 STATE COLLEGE PA.

Charge: CRIMINAL CONSPIRACY, CRIMINAL COMPLICITY

Sentence: WAITING TRIAL Bill & Term No.

Minimum Date: Maximum Date:

Detainer (s): F.B.I WILL BE TAKING MR YURKY ON 1/11/82 TO BE ARRAIGNED ON CHARGES OF BANK ROBBERY

The above named person is being transferred on 1/8/82 for the purpose of SECURITY RISK

To assist in supervising this resident while in your custody, the following information is furnished:

Custodial Classification: MAXIMUM SECURITY

Special Problems: NONE KNOWN

Medical Information: NONE

Recommendations:

BEST AVAILABLE COPY

DATE:	SIGNATURE:	TITLE: ASST WARDEN
1/8/82	Robt A. Miller	RECORD OFFICER

INSTRUCTIONS: THIS FORM IS TO BE GIVEN TO THE OFFICERS ASSUMING CUSTODY OF RESIDENT FOR DELIVERY TO THE COGNIZANT AUTHORITY. PREPARE IN DUPLICATE, RETAIN COPY FOR RECORD JACKET.

TRANSMITTAL OF DATA FOR COUNTY PRISON TRANSFER

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF JUSTICE
BUREAU OF CORRECTION

INSTRUCTIONS

Complete this form, retaining one copy for your file. Forward it to the Deputy Commissioner for Treatment, Bureau of Correction, Box 200, Camp Hill, Pennsylvania 17011, ALONG WITH the JBC-5B and copies of ALL appropriate commitment papers, confinement papers, and detainers. Section 1 in the JBC-5B must be completed on all prisoners you wish to transfer. Also, Section 2 in the JBC-5B must be completed for any unsentenced or untried prisoners you wish to transfer. Upon approval of the transfer, the Deputy Commissioner will forward the JBC-185, along with necessary documents, to the institution he has approved for the transfer. The JBC-5B will be returned to you UNBURSTED (with the carbons still intact). You will then obtain the Judge's approval, remove only the last carbon and the last sheet for your records, and forward the remaining parts of the JBC-5B UNBURSTED to the institution approved for this transfer with the delivering Sheriff and the prisoner. No transfer will be approved between a county prison and a Bureau of Correction institution UNLESS forms JBC-185 and JBC-5B are completed as outlined above.

COUNTY PRISON NO.	PAROLE BOARD NO.	PRISONER'S NAME	COUNTY PRISON	DATE OF REQUEST
		YURKY: DAVID A.	CLINTON	1/8/82

DETAILED REASON FOR REQUESTING THIS TRANSFER:

SECURITY RISK

THIS PRISONER IS SERVING THE FOLLOWING SENTENCE:

DATE OF SENTENCE	EFFECTIVE DATE	COURT, INDICTMENT NUMBER, TERM	MINIMUM Y	MINIMUM M	MINIMUM D	MAXIMUM Y	MAXIMUM M	MAXIMUM D	JUDGE	OFFENSE

SUMMARY OR REMARKS ON SENTENCE

TOTAL SENTENCE:

COMMITMENT CREDIT

FOLLOWING THE ABOVE SENTENCE, THIS PRISONER HAS THE FOLLOWING DETAINERS:

DATED	FROM (Include address)	CHARGING	INDICT-WARRENT NOS.	REMARKS

THIS PRISONER IS NOT SENTENCED; NOTE THE FOLLOWING:

DATE OF CONFINEMENT	DATE OF CONVICTION	DATE OF TRIAL	INDICTMENT NO., TERM	CHARGING
12/24/81				CRIM. CONSPIRACY CRIM. COMPLICITY

SIGNATURE

Robt O. Miller

TITLE

ASST/WARDEN

CUMULATIVE ADJUSTMENT RECORD

BUREAU OF CORRECTION

SCIH
Institution

INSTITUTIONAL NUMBER	PBP NUMBER	NAME
50471		Yurby

DATE	OBSERVATION
-11-82	PRC Received from Clinton County Held for Clinton Co. Ped dalhouries JAC FNH ECW will be here to take him ATA today. No Pay (Assign Max) Review 2-10-82 ~~Cont~~ A C Max

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

[Entered May 10, 1985]

TO: Mr. David Alan Yurky
Amy Zapp, Esq.
John C. Youngman, Jr., Esquire

NOTICE OF JUDGMENT

This Court's Memorandum/opinion was filed and Judgment was entered today in case No. 84-5636 and copies are enclosed herewith.